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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 18, 2020

SEAN F. MCVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GEOFFREY L.,

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:19-CV-3138-RMP

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
REMANDING FOR ADDITIONAL
PROCEEDINGS

BEFORE THE COURT, without oral argument, are cross-motions for summary judgment from Plaintiff Geoffrey L.¹, ECF No. 10, and the Commissioner of Social Security ("Commissioner"), ECF No. 11. Plaintiff seeks judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's denial of his claim for disability insurance benefits under Title XVI of the Social Security Act (the "Act").

¹ In the interest of protecting Plaintiff's privacy, the Court will use Plaintiff's first name and last initial.

1 *See* ECF No. 10 at 2. Having reviewed the parties' motions and the administrative
2 record, the Court is fully informed. The Court grants in part Plaintiff's motion,
3 denies the Commissioner's motion, and remands the matter to the agency for further
4 proceedings.

5 **BACKGROUND**

6 In 2012 the treatment that Plaintiff received for his diverticulitis resulted in
7 development of Achilles tendonitis and residual neuropathy. AR 505, 574. He
8 reported significant changes in his abilities following this incident, with pain and
9 tingling interfering with his formerly active lifestyle. AR 607, 732. He also
10 continued to experience issues with his diverticulitis, eventually undergoing a
11 sigmoidectomy in May 2017. AR 732, 298-300. In response to his pain and changed
12 social stressors, including the loss of his home and his lack of finances, he developed
13 depression. AR 607-08, 750-52.

14 On May 19, 2016, Plaintiff filed an application for Title XVI disability
15 benefits, alleging disability based on diverticulitis, Achilles tendon problems,
16 neuropathy in his feet, and depression. AR 314-15. The claim was denied initially
17 and upon reconsideration. AR 338-41, 343-45. Plaintiff had an initial hearing before
18 ALJ Laura Valente on January 9, 2018, which was postponed in order for Plaintiff to
19 retain a representative. AR 274-92. A second hearing was held on May 3, 2018 (AR
20 293-312), and on October 25, 2018, the ALJ denied Plaintiff's claim. AR 231-43.

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1 Plaintiff requested and was denied review by the Appeals Council, leaving the ALJ's
2 decision as the final decision of the Commissioner. AR 1-5. Plaintiff now seeks
3 judicial review of the Social Security Administration's disability determination.

4 ***ALJ's Decision***

5 On October 25, 2018, the ALJ issued an unfavorable decision. AR 231-43.
6 Applying the five-step evaluation process, Judge Valente found:

7 **Step one:** Plaintiff had not engaged in substantial gainful activity since May
8 19, 2016, the application date. AR 234.

9 **Step two:** Plaintiff had the following severe impairments that were medically
10 determinable and significantly limited his ability to perform basic work
11 activities: gastrointestinal conditions, headaches, Achilles tendonitis,
12 peripheral neuropathy, right knee tear, and affective disorder. *Id.*

13 **Step three:** The ALJ concluded that Plaintiff's impairments, considered
14 singly and in combination, did not meet or medically equal the severity of one
15 of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20
16 C.F.R. 416.920(d), 416.925 and 416.926). AR 235-36.²

17 **Residual Functional Capacity ("RFC"):** The ALJ found that Plaintiff had
18 the RFC to:

19 perform light work as defined in 20 CFR 416.967(b), except for
20 the following limitations: he can sit for six hours, and stand and

21 ² The ALJ's decision appears in the record out of order, but all pages are present.

1 walk for four hours combined; and he can occasionally push/pull
2 with bilateral lower extremities for activities such as operating
3 foot pedals. He can occasionally perform all postural activities
4 except he can frequently stoop and climb ramps and stairs; he
5 can balance unlimitedly; and he must avoid concentrated
6 exposure to wetness, vibrations, pulmonary irritants and hazards,
7 such as heights and dangerous moving machinery. He has
8 sufficient concentration and pace for simple and routine tasks in
9 two-hour increments with usual and customary breaks
throughout an eight-hour workday.

10 AR 238. In determining Plaintiff's RFC, the ALJ found that his statements
11 concerning the intensity, persistence and limiting effects of his symptoms "are
12 not entirely consistent with the medical evidence and other evidence in the
13 record." *Id.*

14 **Step four:** The ALJ found that Plaintiff was capable of performing his past
15 relevant work as an election clerk. AR 241-4. The ALJ thus found Plaintiff
16 had not been disabled within the meaning of the Social Security Act at any
17 time since May 19, 2016, the application date. AR 242-43.

18 **LEGAL STANDARD**

19 **A. Standard of Review**

20 Congress has provided a limited scope of judicial review of a Commissioner's
21 decision. 42 U.S.C. § 405(g). A court may set aside the Commissioner's denial of
benefits only if the ALJ's determination was based on legal error or not supported by
substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985) (citing
42 U.S.C. § 405(g)). "The [Commissioner's] determination that a claimant is not

1 disabled will be upheld if the findings of fact are supported by substantial evidence.”
2 *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)).
3 Substantial evidence is more than a mere scintilla, but less than a preponderance.
4 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); *McCallister v.*
5 *Sullivan*, 888 F.2d 599, 601–02 (9th Cir. 1989). Substantial evidence “means such
6 evidence as a reasonable mind might accept as adequate to support a conclusion.”
7 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted). “[S]uch
8 inferences and conclusions as the [Commissioner] may reasonably draw from the
9 evidence” will also be upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir.
10 1965). On review, the court considers the record as a whole, not just the evidence
11 supporting the decisions of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22
12 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

13 It is the role of the trier of fact, not the reviewing court, to resolve conflicts in
14 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
15 interpretation, the court may not substitute its judgment for that of the
16 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999); *Allen v.*
17 *Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision supported by
18 substantial evidence will still be set aside if the proper legal standards were not
19 applied in weighing the evidence and making a decision. *Brawner v. Sec'y of Health*
20 *and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988). Thus, if there is substantial

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1 evidence to support the administrative findings, or if there is conflicting evidence
2 that will support a finding of either disability or nondisability, the finding of the
3 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229–30 (9th Cir.
4 1987).

5 **B. Definition of Disability**

6 The Social Security Act defines “disability” as the inability “to engage in any
7 substantial gainful activity by reason of any medically determinable physical or
8 mental impairment which can be expected to result in death or which has lasted or
9 can be expected to last for a continuous period of not less than 12 months.” 42
10 U.S.C. §§ 1382c(a)(3)(A). The Act also provides that a claimant shall be determined
11 to be under a disability only if his impairments are of such severity that the claimant
12 is not only unable to do his previous work, but cannot, considering the claimant’s
13 age, education, and work experiences, engage in any other substantial gainful work
14 which exists in the national economy. 42 U.S.C. §§ 1382c(a)(3)(B). Thus, the
15 definition of disability consists of both medical and vocational components. *Edlund*
16 *v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

17 **C. Sequential Evaluation Process**

18 The Commissioner has established a five-step sequential evaluation process
19 for determining whether a claimant is disabled. 20 C.F.R. § 416.920. Step one
20 determines if he is engaged in substantial gainful activities. If the claimant is

1 engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §
2 416.920(a)(4)(i).

3 If the claimant is not engaged in substantial gainful activities, the decision
4 maker proceeds to step two and determines whether the claimant has a medically
5 severe impairment or combination of impairments. 20 C.F.R. § 416.920(a)(4)(ii). If
6 the claimant does not have a severe impairment or combination of impairments, the
7 disability claim is denied.

8 If the impairment is severe, the evaluation proceeds to the third step, which
9 compares the claimant's impairment with a number of listed impairments
10 acknowledged by the Commissioner to be so severe as to preclude any gainful
11 activity. 20 C.F.R. § 416.920(a)(4)(iii); *see also* 20 C.F.R. § 404, Subpt. P, App. 1. If
12 the impairment meets or equals one of the listed impairments, the claimant is
13 conclusively presumed to be disabled.

14 If the impairment is not one conclusively presumed to be disabling, the
15 evaluation proceeds to the fourth step, which determines whether the impairment
16 prevents the claimant from performing work that he has performed in the past. If the
17 claimant is able to perform his previous work, the claimant is not disabled. 20 C.F.R.
18 § 416.920(a)(4)(iv). At this step, the claimant's RFC assessment is considered.

19 If the claimant cannot perform this work, the fifth and final step in the process
20 determines whether the claimant is able to perform other work in the national
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1 economy in light of his residual functional capacity and age, education, and past
2 work experience. 20 C.F.R. § 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137, 142
3 (1987).

4 The initial burden of proof rests upon the claimant to establish a *prima facie*
5 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
6 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
7 is met once the claimant establishes that a physical or mental impairment prevents
8 him from engaging in his previous occupation. *Meanel*, 172 F.3d at 1113. The
9 burden then shifts, at step five, to the Commissioner to show that (1) the claimant
10 can perform other substantial gainful activity, and (2) a “significant number of jobs
11 exist in the national economy” which the claimant can perform. *Kail v. Heckler*, 722
12 F.2d 1496, 1498 (9th Cir. 1984).

13 ISSUES ON APPEAL

14 The parties’ motions raise the following issues regarding the ALJ’s decision:

15 1. Did the ALJ err in her consideration of Plaintiff’s mental impairments and
16 their impact on his RFC by improperly weighing the opinion evidence?

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DISCUSSION

1. Mental opinion evidence

Plaintiff contends the ALJ erred in her assessment of his mental limitations, specifically with respect to his ability to interact with others and to maintain appropriate behavior in a work setting. ECF No. 10 at 3-11. Plaintiff claims the ALJ erred in her discussion of the opinions from Dr. Kouzes and Dr. Ford. *Id.*

The Commissioner argues the ALJ gave legally sufficient reasons for discounting Dr. Kouzes and Dr. Ford and formulated an RFC that is supported by substantial evidence. ECF No. 11 at 5-10.

When an examining doctor's opinion is contradicted by another opinion, an ALJ must articulate "specific and legitimate" reasons, supported by substantial evidence in the record, to reject the opinion. *Lester v. Chater*, 81 F.3d 821, 830–31 (9th Cir. 1995). "An ALJ can satisfy the 'substantial evidence' requirement by 'setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating [her] interpretation thereof, and making findings.'" *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).

Plaintiff attended a consultative psychological exam with Dr. Kouzes for the Washington State Department of Social and Health Services in February 2016. AR 607-11. Dr. Kouzes diagnosed Plaintiff with an adjustment disorder with depressed

1 mood and assessed multiple mild and moderate limitations in work-related
2 functions, and opined Plaintiff had a marked impairment in his ability to perform
3 activities within a schedule, maintain regular attendance, and be punctual within
4 customary tolerances without special supervision. AR 608-09.

5 The ALJ gave this opinion “less weight”:

6 Jan Kouzes, Ed.D., conducted a psychological evaluation on behalf of
7 DSHS (4F). While she noted that the claimant’s dysphoric mood may
8 make it difficult for him to concentrate, focus, and maintain appropriate
9 work behavior, her mental status exam findings were normal and she
10 recommended the claimant could benefit from Division of Vocational
11 Rehabilitation (DVR) services (4F4). During the evaluation, the
12 claimant followed three-step instructions; recalled 3/3 objects correctly
13 immediately and after five minutes; identified current events; and
defined common idioms (4F5). He also followed the conversation,
understood direction, and had normal comprehension and vocabulary.
He also spelled “world” correctly forwards and backwards; and he
demonstrated a correct digit span forwards of seven and backwards of
six (4F5). Dr. Kouzes reviewed no treatment evidence or other records,
and therefore had little understanding of the overall record on which to
form an opinion.

14 AR 241.

15 Plaintiff attended a second consultative psychological exam in March 2018
16 with Dr. Amy Ford. AR 719-24. Dr. Ford diagnosed Plaintiff with major depressive
17 disorder, insomnia, and a personality disorder not otherwise specified. AR 721. She
18 assessed multiple mild and moderate limitations, along with a marked impairment in
19 learning new tasks and severe impairment in performing within a schedule,
20 maintaining regular attendance, being punctual within customary tolerances, and

1 completing a normal workweek without interruptions from psychologically based
2 symptoms. AR 722.

3 The ALJ gave this opinion “less weight” as well:

4 In March 2018, Dr. Amy Ford completed a DSHS psychological
5 evaluation of the claimant and opined that the claimant was significantly
6 limited in his ability to perform basic work functions, including a
7 moderate limitation to ask simple questions and request assistance, and
8 a severe limitation in completing a normal workday without
9 interruptions due to symptoms (12F4). These opinions are inconsistent
10 with her own mental status exam, which revealed normal thought
11 process and content; orientation; perception; memory; fund of
knowledge; concentration, abstract thought, and insight and judgment
(12F5-6), as well as the claimant’s treatment records, which generally
demonstrate the same (e.g., 13F6, 8, 11, 15, 19, 25, 28, 31; 15F4, 11,
25). Furthermore, consistent with the claimant’s declination to engage
in mental health treatment, he refused to complete a personality
assessment inventory, a component of his psychological evaluation
(12F4).

12 AR 241.

13 Plaintiff argues the ALJ relied on normal findings in the opinions that were
14 not relevant to the conclusions, and asserts the reports document behaviors that
15 support the assessed limitations. ECF No. 10 at 7. He further argues the opinions are
16 supported by other evidence in the record, and that the cumulative evidence indicates
17 Plaintiff would have difficulty interacting with others and maintaining appropriate
18 behavior in the workplace. *Id.* at 11.

19 The Commissioner responds that the ALJ gave specific and legitimate reasons
20 for discounting each of these opinions when she noted their inconsistency with the
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1 individual exam findings and the objective evidence in the record as a whole. ECF
2 No. 11 at 8-9. The Commissioner additionally argues that substantial evidence
3 supports the RFC as formed by the ALJ, and that the Court should not reweigh the
4 evidence. *Id.* at 6-7, 9.

5 The Court finds the ALJ failed to give specific and legitimate reasons for
6 discounting these opinions. While an ALJ must consider an opinion's supportability
7 and consistency with the record, 20 C.F.R. § 416.927(c)(3)-(4), here the ALJ's
8 discussion omitted relevant findings. The ALJ stated Dr. Kouzes' mental status
9 exam findings were normal and that she recommended Plaintiff could benefit from
10 vocational assistance. AR 241. However, Dr. Kouzes' mental status exam findings
11 included notes of depressed mood and affect, and that his thought content was
12 helpless/hopeless, and consisted of somatic complaints and decreased self-worth.
13 AR 611. Her recommendation for vocational assistance was qualified as "when
14 suitable," implying that it was not suitable at the moment. AR 610. Therefore, the
15 ALJ's summary of her findings was incomplete. Similarly, the ALJ's discussion of
16 Dr. Ford's findings omitted her observations that Plaintiff had pressured speech,
17 spoke very rapidly and incessantly and had to be interrupted in order to be
18 questioned, was preoccupied with past injustices, at times got angry and raised his
19 voice in frustration, and presented as angry, severely depressed, and hopeless. AR
20 723. While both doctors also noted a number of normal findings, the normal findings
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1 do not negate the abnormal findings. Substantial evidence does not support the
2 ALJ's conclusion that the opinions are inconsistent with the exam findings.

3 The ALJ also found Dr. Kouzes had little understanding of the overall record
4 given she did not review other records, and found Dr. Ford's opinion was
5 inconsistent with the treatment records. AR 241. As with her summaries of the
6 exams, the ALJ's discussion of the record relating to Plaintiff's mental limitations
7 omitted numerous abnormal findings. AR 239-40. While an ALJ is not required to
8 discuss every treatment record and clearly must rely on examples to support their
9 findings, the examples an ALJ chooses "must *in fact* constitute examples of a
10 broader development." *Garrison v. Colvin*, 759 F.3d 995, 1018 (9th Cir. 2014). The
11 ALJ's discussion of the record focused on the normal exam findings throughout, and
12 omitted reference to the records that found Plaintiff to be circumstantial, anxious,
13 dramatic, accusatory, difficult to redirect, anhedonic, hopeless, and fatalistic, and
14 presenting with suicidal ideation, pressured or disjointed speech, and perseverating
15 on his past medical treatment. AR 575, 628, 711, 732, 746, 749, 752, 754-55, 759-
16 60. The Court therefore finds the ALJ's implication that the record demonstrates
17 largely normal findings inconsistent with Dr. Ford and Dr. Kouzes' opinions is not
18 supported by substantial evidence.

19 On remand the ALJ will reconsider the medical opinion evidence along with
20 the record as a whole.

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1 **2. Request for remand for benefits**

2 Generally, the appropriate course upon finding error in the Commissioner's
3 determination of a claimant's application is to "remand to the agency for additional
4 investigation or explanation." *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir.
5 2004) (internal citation omitted). A court should take the exceptional step of
6 remanding for an immediate award of benefits only where:

7 (1) The ALJ has failed to provide legally sufficient reasons for rejecting.
8 . .evidence [probative of disability], (2) there are no outstanding issues
9 that must be resolved before a determination of disability can be made,
10 and (3) it is clear from the record that the ALJ would be required to find
11 the claimant disabled were such evidence credited.

12 *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000) (internal quotation omitted).

13 Remand is appropriate when additional administrative proceedings could remedy
14 defects. *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989).

15 In this case, the Court finds that further development is necessary for a proper
16 determination to be made. Because of the ALJ's erroneous analysis of the
17 psychological opinion evidence, questions persist regarding Plaintiff's degree of
18 impairment throughout the relevant period. The Court does not find that the record
19 as a whole compels a finding that Plaintiff is disabled.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, **ECF No. 10**, is **GRANTED**

3 **IN PART** with respect to remand and **DENIED IN PART** with respect to

4 remanding with instructions to credit any particular evidence as true and award

5 benefits.

6 2. Defendant's Motion for Summary Judgment, **ECF No. 11**, is **DENIED**.

7 3. The matter is **REMANDED** to the Commissioner for additional

8 proceedings consistent with this Order.

9 4. Judgment shall be entered for Plaintiff.

10 **IT IS SO ORDERED.** This District Court Clerk is directed to enter this

11 Order, enter Judgment as outlined, provide copies to counsel, and **close** this case.

12 **DATED** June 18, 2020.

13 *s/Rosanna Malouf Peterson*
14 ROSANNA MALOUF PETERSON
United States District Court